

### **REMARKS**

Claims 47-105 are pending in this application. The Examiner has withdrawn claims 47-85, 90, 93, 94 and 97-105 as directed to non-elected subject matter. Claims 86-88, 91, 92, 95 and 96 stand rejected under 35 U.S.C. § 103 as obvious over U.S. Pat. No. 3,993,794 to Bernardin ("Bernardin").

Bernardin discloses a texturized protein. The protein is formed by dissolving a cereal grain protein capable of forming microfibrillars in water. The pH of the solution is adjusted to 5.0 to 6.0. Then, the ionic strength of the solution is adjusted to 0.004-0.010 to aggregate the protein molecules into microbibrils.

In contrast, claim 86, as amended, recites that a protein additive is formed by denaturing one or more globular proteins. Support for the amendments to claim 86 can be found on page 4, lines 1-29 and non-elected claims 47, 48 and 58.

When making a rejection under 35 U.S.C. § 103, the Examiner has the burden of establishing a *prima facie* case of obviousness. *In re Fritch*, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). To establish this, at a minimum, each and every claimed element must be taught or made obvious by the applied references. *Ex parte Hellums*, Application No. 09/103,704, Appeal No. 2001-2694, 2003 WL 25281923 at \*4 (BPAI Jul. 15, 2003); *Ex parte Likins*, Application No. 10/010,392, Appeal No. 2004-0760, 2004 WL 4981756 at \*3 (BPAI Apr. 8, 2004). Here, Bernardin fails to teach denaturing the globular proteins. As such, Bernardin fails to teach or suggest each and every element recited in claim 86. Since claims 87, 88, 91, 92, 95, 96 and 106-111 depend from claim 86, these claims are likewise patentable over Bernardin for the same reasons.

In fact, Bernardin expressly teaches that "the aqueous solution of protein can be treated at a temperature of from about 0° C to 40° C. The rate of texturization increases as the temperature increases. However, if temperatures greater than 40° C are employed, denaturation of the protein occurs. Consequently, the temperature at which the aqueous solution is treated

Application No. 10/536,713  
Paper Dated: January 31, 2011  
In Reply to USPTO Correspondence of September 30, 2010  
Attorney Docket No. 0470-051644

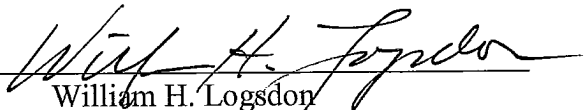
should never exceed the temperature at which the protein is denatured.”<sup>1</sup> A claimed invention is not obvious if a reference teaches away from the invention. *Takeda Chemical Industries, Ltd. v. Alpharpharm Pty., Ltd.*, 492 F.3d 1350, 1359 (Fed. Cir. 2007). Here, Bernardin expressly teaches away from denaturing the proteins whereas claim 86 recites denaturing globular proteins. This teaching away further establishes that claim 86, and the claims that depend therefrom, are patentable over Bernardin.

In addition to the reasons discussed above, new claim 106 is believed to be patentable over the cited reference because Bernardin does not teach heating a solution at an acidic pH or adding a denaturing agent.

### CONCLUSION

In view of the foregoing, Applicants respectfully request that this rejection be reconsidered and withdrawn, that claims 86-88, 91, 92, 95, 96 and 106-111 be allowed, and that withdrawn claims 47-85, 90, 93, 94 and 97-105 be rejoined and allowed.

Respectfully submitted,  
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<sup>1</sup> Bernardin at col. 5, lines 1-8.